

THOMAS L. SCHRAG
Claimant

HWA DAVIS CONSTRUCTION & SUPPLY
Respondent

NORTHWESTERN NATIONAL INSURANCE
Insurance Carrier

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This is an appeal from a preliminary hearing. K.S.A. 1997 Supp. 44-534a grants jurisdiction to the Appeals Board to review the following issues on appeal from preliminary hearings: (1) whether the employee suffered an accidental injury; (2) whether the injury

arose out of and in the course of employment; (3) whether notice and claim were timely made; and (4) whether certain defenses apply. Respondent does not raise an issue that falls within one of these categories. Therefore at this stage of the proceeding, K.S.A. 1997 Supp. 44-534a does not empower the Appeals Board with jurisdiction to decide the issue appealed.

K.S.A. 1997 Supp. 44-551(b) confers jurisdiction upon the Appeals Board to review an appeal from a preliminary hearing order entered pursuant to K.S.A. 1997 Supp. 44-534a where it is alleged that the administrative law judge exceeded his or her jurisdiction in making such order. An administrative law judge has the authority at a preliminary hearing to determine whether a claimant is temporarily and totally disabled. Therefore, the Administrative Law Judge did not exceed his jurisdiction and K.S.A. 1997 Supp. 44-551(b) does not grant the Appeals Board jurisdiction, at this juncture of the proceeding, to review and reweigh the evidence concerning the award of temporary total disability benefits.

The respondent may preserve the issue for final award as provided by K.S.A. 1997 Supp. 44-534a(a)(2). That statute provides in pertinent part:

Except as provided in this section, no such preliminary findings or preliminary awards shall be appealable by any party to the proceedings, and the same shall not be binding in a full hearing on the claim, but shall be subject to a full presentation of the facts.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that it does not have jurisdiction to review the preliminary hearing Order dated December 22, 1997, entered by Administrative Law Judge Bruce E. Moore and that this review should be, and is hereby, dismissed.

IT IS SO ORDERED.

Dated this ____ day of February 1998.

BOARD MEMBER

c: Norman I. Cooley, Derby, KS
James A. Cline, Wichita, KS
Bruce E. Moore, Administrative Law Judge
Philip S. Harness, Director